UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

HOSPITAL LA CONCEPCION,

and Case No. 12-CA-260107

UNIDAD LABORAL DE ENFERMERAS(OS),
Y EMPLEADOS DE LA SALUD

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(Pizarro & Gonzalez),
for the Respondent.

DECISION

INTRODUCTION

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. In April 2020,[1] the Hospital la Concepcion (Respondent) announced and shortly thereafter implemented a reduction in employee work hours based upon a projected downturn in patient census due to the COVID-19 pandemic. After learning of Respondent's plans through employee complaints, the employees bargaining representative, Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Union) requested to bargain with Respondent over the decision and the effects of reducing employee work hours and requested information for purpose of bargaining these issues. Respondent refused to fully comply with the Union's requests, contending it was privileged to make the changes based on language in the parties' collective-bargaining agreements and the sudden economic impact caused by the pandemic, and therefore, the requested information was not relevant or necessary for the Union to execute its bargaining duties. As discussed below, I find no merit to Respondent's asserted defenses, and that its failure to bargain and to timely provide requested information violates Section 8(a)(5) and (1) of the National Labor Relations Act (Act).

[1] All dates herein refer to 2020 unless otherwise noted.

STATEMENT OF THE CASE

On May 7, the Union filed Case 12–CA–260107 with Region 12 (Region) of the National Labor Relations Board (Board). The charge, as amended on March 17, 2021, alleges that Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and opportunity to bargain over the decision or the effects of reducing bargaining unit employees' work hours and by failing and refusing to provide requested information relevant to the Union's duty to bargain on behalf of the unit employees. On April 2, 2021, the Region issued the complaint in this matter. On April 16, 2021, Respondent filed an answer and later filed an amendment to its answer on June 7, 2021. (GC Exh. 1(g), (i) and (j).)[2]

I heard this matter on June 9–11, 2021, via Zoom government videoconference. The parties and witnesses participated from various locations in Puerto Rico. I afforded all parties a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, and argue orally on the record. General Counsel and Respondent filed posttrial briefs in support of their positions.

After carefully considering the entire record, including my observation of the demeanor of the witnesses and the parties' briefs, I make the following findings and conclusions.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent is a corporation with an office and a place of business in San Germán, Puerto Rico, where it operates an acute care hospital. In conducting its operations during the calendar year prior to the issuance of the complaint, Respondent derived gross revenues in excess of $250,000 and purchased and received goods valued in excess of $50,000 directly from points outside the Commonwealth of Puerto Rico. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(g) and (j).)

Based on the foregoing, I find that this dispute affects commerce, and the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

[2] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Jt. Exh." for joint exhibits, "GC Exh." for the General Counsel's exhibits, "GC Brief" for General Counsel's posthearing brief, "R. Exh." for Respondent's exhibits, and "R. Brief" for Respondent's posthearing brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision, but rather are based upon my consideration of the entire record for this case.

II. ALLEGED UNFAIR LABOR PRACTICES FACTS AND ANALYSIS

A. Background

The Union and Respondent have a history of collective bargaining covering four bargaining units. On May 24, 2018, Respondent and the Union executed four successor collective-bargaining agreements, collectively referred to herein as the CBAs, covering the following units of employees: the medical technologist CBA,[3] the technician, therapist and assistant CBA,[4] the registered nurse CBA,[5] and the dietary CBA.[6] The employees covered by these units are collectively referred to herein as the Unit employees. (Tr. 90–99.) The CBAs are virtually identical except for their respective unit descriptions and some limited unit specific provisions. The CBAs were effective from May 24, 2018, through May 31, 2021. (GC Exhs. 2a-b, 3a-b, 4b, 5a-b, in Art. 37.)

Respondent employs individuals in the four bargaining units to provide care and services to its patients. Respondent also contracts with independent per diem contractors to perform the work covered by the CBAs. Per diem employees are subject to their individual contracts and are not covered by the CBAs. (Tr. 116–117.) Respondent disputes the Union's claim that its Unit employees have historically worked 40 hours per week. As discussed below, I find that the record establishes that Respondent scheduled Unit employees to work 40 hours each workweek prior to April 20. The two employee witnesses testified, and the employee schedules corroborate, that the days of the week and the shifts that employees are scheduled to work often varied from week to week, but they were scheduled to work 40 hours per week prior to April 2020. (Tr. 23, 44; R. Exh. 1; GC Exhs. 2a-b, 3a-b, 4b, 5a-b, 10a-b and 13a-b.)[7]

There is no dispute that Unit employees experienced a reduction in work hours starting the end of April as Respondent had announced would occur. The record contains no evidence of

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[3] Medical Technologist CBA—Art. III, Appropriate Unit—All medical technologists employed by Hospital La Concepcion located in San Germán, Puerto Rico, in its clinical laboratory, *excluding* all other professional employees, clerks, laboratory technicians, nurses, and supervisors as defined by law. (GC Exh. 2a-b.)

[4] Therapists and Assistants CBA—Art. III, Appropriate Unit—All laboratory technicians, laboratory assistants, operating room technicians, physical therapy technicians, respiratory therapy technicians, respiratory therapists, radiologic technologists, escorts, pharmacy assistants, pharmacy technicians, licensed practical nurses, nursing assistants, employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, professional, clerical employees, guards, and other supervisors as defined by law. (GC Exh. 3a-b.)

[5] Registered Nurses CBA—Art. III, Appropriate Unit—All registered nurses employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, clerical employees, guards, head nurses, and other supervisors as defined by law. (GC Exh. 4a-b.)

[6] Dietary CBA—Art. III, Appropriate Unit—All dietary technicians, cafeteria, storeroom, janitors and/or environmental services technicians, maintenance and/or physical facilities, maintenance technicians, parking employees and drivers employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* messengers, all other employees, professionals, registered nurses, technical employees covered by another collective-bargaining agreement, guards, and supervisors as defined by law. (GC Exh. 5a-b.)

[7] Union Representative Echevarria testified that there may be some employees who by a prearranged agreement regularly work less than 40 hours per week performing work covered by the CBAs and that any such employee would be covered by the applicable CBA. (Tr. 240–241.) I note that the CBAs appear to contemplate at least some employees not working 40 hours per week because pursuant to the CBAs employees who work at least 115 hours in a month accumulate sick and vacation time. (GC Exhs. 2a-b, 3a-b, and 4b.)

any similar reduction before April 20. Respondent attempted to establish that prior to April 20, employees were not regularly scheduled, worked, and paid for 40 hours per week by providing a splattering of time records for one employee witness. I credit scheduling documents and employee testimony that employees were regularly scheduled for 40 hours per week as required by Article XIII, A of the CBAs. Employees also take unpaid leave, work overtime hours, and receive holiday, shift differential, vacation, and sick leave pay. (Tr. 24, 26, 71–73; R. Exh. 1.) As is often the case with hourly employees, these full-time hourly employees, occasionally worked and were paid for more or less than 40 hours per week. (Tr. 24, 26, 71; R. Exh. 1; GC Exhs. 2a-b, 3a-b, 4b, 10a-b, and 13a-b.) For example, one employee testified that on rare occasions he was sent home early from his scheduled shift due to lack of work and on other times he took approved unpaid leave.[8] As is customary for hourly employees, he was paid his hourly rate for the hours worked or benefit leave taken, and he received overtime pay when he qualified for it. This sometimes resulted in him being paid for more or less than 40 hours per week. (Tr. 71.)

B. The Unilateral Reduction and/or Suspension of Unit Employee Work Hours

1. The facts

On March 12, in response to the COVID-19 pandemic, Puerto Rico Governor Wanda Vazquez-Garced issued an emergency lockdown order to slow the spread of COVID-19. The order included restrictions on non-emergency services, such as elective surgeries, which was extended at least through the beginning of May. (GC Exhs. 15 and 16; R. Exh. 27.)

In early to mid-April Respondent reviewed the average daily patient census data for 2019 through the beginning of April 2020. (Tr. 283–285.) The census reflects the average daily number of patients in the hospital for each month. In 2019 the average daily census for the year was 106. The average daily census in January and February 2020 significantly exceeded the census for the same months in 2019. In March 2020 the census was 108. In April the average daily census dropped to 73 and the projected patient census for the rest of 2020 was well below 2019 monthly averages. (Tr. 284; R. Exh. 12.) Based upon its projections, Respondent projected that operating expenses would outpace income. (R. Exh. 18.) The record does not contain the data used to make these projections or information about how the effects of the pandemic on the hospital could be accurately anticipated using the prediction model. Respondent did not submit evidence of actual operating costs or decreases in patient census from March 2020 through March 2021, during which it continued to reduce the number of hours Unit employees worked. (Tr. 156, 181–182, 244.)

Starting on April 14, Respondent distributed a letter to employees explaining in general terms that their number of work hours each week would be reduced without pay. (Tr. 23, 24; R. Exh. 12.) The letter cited the global pandemic and the Governor's emergency orders as resulting in economic difficulties for the hospital due to profound increases in equipment costs and decreases in patient census. The letter[9] went on to state:

[8] The record contains no evidence that an employee ever grieved being sent home early from the scheduled shift for lack of work or that the parties ever otherwise negotiated this issue.

[9] Unless otherwise noted, text taken from exhibits is as written in the exhibit.

> As a result of this, the Hospital has been forced to take a series of difficult decisions in view of this challenging crisis for the purpose of protecting its operation, its fiscal health, the best welfare and security of its employees, as well as the most effective use of its supplies. These decisions include adjustments to the contracts of various suppliers. As part of these decisions, as of the end of the month of March we will commence to implement certain suspensions without salary of several employees, we will reduce the compensation of the exempt employees and *we will reduce the work schedule of many employees that will continue to provide services at the Hospital* [emphasis added]. Effective today, these measures will be extended to more employees according to the evaluation of the need for service. Your immediate supervisor will notify you if any of these measures applies to you.
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> Despite the impact of the decision, several of its positive effects are: (1) allowing our tireless personnel time to rest together with their family to renew their strength and energy so that when they return again to their functions, they can continue to provide the best quality service to our patients; (2) serves as a preventive measure of isolation so that our employees and their families are safe and separated from the continuous risk of inherent contagion in any hospital; and (3) allows the Hospital to manage more effectively the available inventory of the equipments of personal protection.
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> The measures implemented contribute to the social distancing that we need in Puerto Rico, limiting the number of employees whose presence we physically require at the Hospital. We must recognize, also, that the uncertainty itself of contagion of our population has caused in turn that the demand for our services has been dramatically reduced in multiple areas of the Hospital.
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> We want to make it clear that the suspensions[10] without pay DO NOT constitute lay-offs or dismissals. It involves temporary suspensions. These temporary suspensions without pay will be extended until June 20, 2020, in the worse of cases. On or before the date in which there ends the suspension period, we will communicate with each of the employees affected to inform them the next step to be followed. Depending on how the health situation of the country and the demand for our services improves, the Hospital may communicate with you before the indicated date.

The letter also informed employees that they could seek unemployment benefits and that special governmental assistance may be available to them due to the pandemic, thanked them for their understanding, and assured them that the measures were expected to be temporary. (R. Exh. 12.)

[10] In Board proceedings, the term "layoff" is frequently used to mean a nondisciplinary suspension from work without pay as occurred in this case. Respondent's counsel objected to calling the temporary, nondisciplinary suspensions from work in this case layoffs. Counsel asserted that the term "layoff" under Puerto Rican law connotes a suspension from work meeting specific parameters which triggers a duty to pay certain employee benefits not at issue in this proceeding. (Tr. 150; GC Exh. 10b.) Therefore, throughout this decision I use the terms suspension and layoff to refer to a temporary, nondisciplinary suspension from work without considering or making any conclusions about whether the suspensions constituted a layoff under Puerto Rican law.

There is no dispute that Respondent failed to give the Union notice or opportunity to bargain about the decision to reduce work hours before it announced the decision to the Unit employees. (Tr. 104.) The Union first learned about the planned reductions when employees contacted the Union in response to Respondent's April 14 letter. (Tr. 101, 104.) On April 15, Union Agent Ariel Echevarria (Echevarria) sent Respondent's, human resource director, Jorge Rodriguez Diaz (Rodriguez) an email protesting Respondent's decision to reduce/suspend Unit employee work hours without giving the Union notice and opportunity to bargain over that decision. As discussed below, in this email Echevarria also requested to bargain over the decision and its effects and requested information for that purpose.

On April 15, Respondent started distributing individual letters to employees noting the change in their scheduled work hours starting the week of April 19. (Tr. 24, 46, 71; GC Exh. 11a-b.) The letter asserts that the reduction in work hours was necessary to prevent the spread of COVID-19, allow the hospital to meet social distancing guidelines, preserve personal protective equipment, and help protect the employees and their families. (GC Exh. 9a-b.) The amount of reduction in work hours and the amount of time that the reductions remained in place varied among the employees with the impact for some employees extending into March 2021. (Tr. 24, 28, 46; GC Exh. 9a-b.) Other employees, like the employees who worked in the endoscopy department were placed on temporary nondisciplinary suspensions of all their work hours without pay. (Tr. 182.) The reduction in work hours and temporary suspensions from work affected approximately 349 Unit employees' pay and other benefits, such as vacation, sick time, holidays, continuing education, and Christmas bonuses, which are accrued based upon the number of hours or days worked per the CBAs. (Tr. 251; GC Exh. 13 attachment.) While there was some assertion the unit employees working in the environmental service, intensive care, neurosurgery, and respiratory therapy departments were not subject to the work hour reductions, documentary evidence of those effected includes Unit employees assigned to the neurosurgery and intensive care departments. (Tr. 253, 316; GC Exh. 13 attachment.) At least some managerial employees also took a percentage decrease in their salaries and worked fewer days per week for some unspecified period. (Tr. 315, 317.)

2. *The relevant CBAs provisions*

While I considered the entire CBAs in my analysis of whether the reductions in Unit employees work hours constituted unilateral changes in violation of Section 8(a)(5) and (1), I reproduce the most relevant portions of the CBAs for ease of reference.[11] (GC Exhs. 2a-b, 3a-b, 4b, 5a-b.)

> ARTICLE XIII
> WORKING DAYS
> A. Regular Work Day: The weekly regular work days will be of 40 hours within a period of 168 hours [24 x 7] each week. The regular daily work day will be of 8 hours within a period of 24 consecutive hours.
> B. Work Week: The work week will consist of a period of 168 consecutive hours. The work week commences on Sunday of each week.

[11] For emphasis, I have underlined the portions of the CBAs most heavily relied upon by the parties.

C. Every hour worked in excess of 8 hours a day will be paid at the rate of two times the regular hourly pay of the employee.
D. There will be no pyramiding in the payment of extra hours.
E. The work schedules will be prepared by the supervision so that every Medical Technologist will have, at the least, one (1) weekend free a month without leaving 11-7. The work shifts will be the following: 7:00am-3:00pm, 3:00pm-11:00pm, 11:00pm-7:00am and 6:00am-2:00pm, 2:00 p.m. to 10:00 p.m; 10:00 p.m. to 6:00 a.m. This will not limit the employer who for needs of the service, can assign other work times.[12]
F. The Medical Technologists will not be affected in any manner whatsoever by the changes in the initiation of the work week. Said employees will continue to enjoy their shifts as before the change.[13]

ARTICLE XXXII
ADMINISTRATION RIGHTS
Nothing agreed herein will be understood as a limitation of the right of the Hospital to direct and administer its operations according to the criteria of its directors. Therefore, all of the rights, powers, authority and functions which up to the present has been exercised by the Board of Directors, or which in the future it may exercise in relation to the direction and administration of the Hospital will correspond solely to the Hospital. It is expressly recognized that these rights, powers, authority and prerogatives include, without any limitation whatsoever the full and exclusive control and operation of the hospital, the determination of the activities which the Hospital will be engaged in, the adoption of standards and procedures referring to the rendering of medical hospital services, the method and manner in which said services will be rendered, the materials and equipment to be used by the Hospital and the medical, paramedical or office personnel that are required for said purposes; the right to establish work shifts; to make changes to the same and to assign personnel to cover said shifts, the right to create new positions, to establish job descriptions for all of the work posts or positions, to change said job descriptions, the right to conduct reorganizations, whether partial or total of all of its operations, to eliminate departments and to establish others; to adopt new measures and/or procedures and to make technological changes in all of its operations, the right to maintain the order and the efficiency in the hospital; the right to deem all of its operations terminated as well as also the right to transfer all of its operations or any part of the same to any other entity, corporation or institution. It also includes the right to promote and to put into effect safety measures and measures of conduct, the determination of the number of employees, the selection of new employees and the direction of all of its employees, including, without any limitation whatsoever, the right to employ, re-employ, select and train new employees and the right to assign, reassign, temporarily suspend, reinstate, promote, withdraw, discipline, remove and transfer its employees.

[12] Subsection E varies in each of the CBAs but contains similar language with some variation in shift schedules.
[13] Subsection F in the various CBAs lists job positions that are not subject to the shifts listed in subsection E. The CBA covering registered nurses does not contain a subsection F.

[paragraph concerning the administration's right to discipline omitted]
It is understood that these rights, authority and faculty of the Hospital will remain in effect during the entire life of this Agreement and will only be subject to the limitations expressly contained in this Agreement, it being understood that nothing mentioned up to now may be used in bad faith, indiscriminately, in violation of the Agreement or against the seniority rights, it also being understood that the exercise of these prerogatives is not subject to the complaints and grievance procedure, except if an employee is disciplined or dismissed, in which case the Complaints and Grievance Committee will have jurisdiction to elucidate the complaint.

ARTICLE XXXIV
EXCLUSION CLAUSE
The parties acknowledge having had ample opportunity to discuss all things related to salaries, working hours and other working conditions of the employees covered by this bargaining unit. They also acknowledge that this contract represents the only source of the parties' obligations and rights and there is no obligation to negotiate on subject matters not included in this Collective Bargaining Agreement.

3. Duty to give notice and opportunity to bargain in good faith

An employer violates Section 8(a)(5) and (1) of the Act when it unilaterally makes a material substantial, and significant change to the wages, hours, or other terms and conditions of employment of bargaining unit employees without first providing the collective-bargaining representative with notice and a meaningful opportunity to bargain. *NLRB v. Katz,* 369 U.S. 736 (1962); *Ivy Steel & Wire, Inc.,* 346 NLRB 404, 419 (2006). An employer may make a unilateral change to a mandatory subject of bargaining as long as it does not alter the status quo and does not vary in kind or degree from what has been customary in the past. *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 11 (2019); *Raytheon Network Centric Systems*, 365 NLRB No. 161, slip op. at 5, 8, 16, 20 (2017). A violation of Section 8(a)(5) does not require a finding of bad faith. *Katz*, supra at 743 and 747.

Here, Respondent did not give the Union notice and an opportunity to bargain over its reduction in Unit employees' work hours, which is a mandatory subject of bargaining. When an employer decides to lay off employees for "economic reasons" such a decision is a mandatory subject of bargaining. *Pan American Grain Co., Inc.*, 351 NLRB 1412, 1414 (2007). See also, *Adair Standish Corp.*, 290 NLRB 317, 319 (1988) (finding unlawful failure to bargain over economically motivated layoffs), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990); *Fibreboard Corp. v. NLRB,* 379 U.S. 203, 213–214 (1964) (stating that measures aimed at reducing labor costs are "matters peculiarly suitable for resolution within the collective bargaining framework").

As discussed above, I find that Unit employees were regularly scheduled and worked 40 hours per week prior to the changes at issue. The limited evidence submitted by Respondent showing infrequent occasions where individual Unit employees were not paid for 40 hours of work due to being sent home early or being granted unpaid leave, is insufficient to contradict

contract language, employee testimony, and documentary evidence that the status quo was that the Unit employees regularly worked 40 hours per week. The reduction in work hours that began in April significantly varied in kind or degree from what has occurred in the past. I find that employees' work hours, and therefore income, being reduced by 20–100 percent is a material, substantial, and significant change to their work hours and corresponding pay. *Palm Beach Metro Transportation, LLC*, 357 NLRB 180, 184 (2011), enfd. 459 Appx. 874 (11th Cir. 2012).

Under these circumstances, I find that Respondent had a duty to give the Union notice and opportunity to bargain concerning the changes to the Unit employees work hours absent a valid defense excusing Respondent from that duty.

4. Contract coverage and contract waiver defenses

Respondent contends that it was privileged to implement a unilateral change based upon the language in the administration rights articles in the CBAs supporting a "contract coverage" and/or "waiver" defense. Under the contract coverage standard, the Board examines "the plain language of the collective-bargaining agreement to determine whether the action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally." *MV Transportation*, supra, at slip op. 2. "Where . . . the agreement will have authorized the employer to make the disputed change unilaterally . . . the employer will not have violated Section 8(a)(5)." Id. at slip op. 11. For an employer to prevail with a contract coverage defense, it must articulate a "sound arguable basis" for its interpretation of the contract and it must not be motivated by animus or bad faith in making the change. *Bath Iron Works*, 345 NLRB 499 (2005), enfd. sub nom. *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007).

If an employer fails to establish a sound arguable basis for its interpretation of the contract, the analysis does not stop there. The employer may still prevail if it demonstrates that the union clearly and unmistakably waived its right to bargain over the change or that its unilateral action was privileged for some other reason. *MV Transportation*, supra at slip op. 2.

Respondent contends the language of the administration rights article of the CBA privileged it to unilaterally implement the reductions in work hours. Respondent relies upon the language giving it broad authority among other things "to establish work shifts; to make changes to the same and to assign personnel to cover said shifts" and "the number of employees." This contention ignores that the language states that those rights are "subject to the limitations expressly contained [within the CBAs]." General Counsel and the Union contend that the administration rights article is limited by the "working days" article, which states that "the weekly regular workdays will be of 40 hours within a period of 168 [24 x 7] hours each week."

Upon review of the contract language, I find that it did not authorize, or cover Respondent's unilateral reduction in employee work hours. In arguing that it had a "sound arguable basis" for its interpretation of the contractual language, Respondent focuses on the language of the article giving it broad authority, including the ability to establish and change work shifts and to assign personnel to the shifts, but it ignores the language stating that these

rights are limited by the other terms of the CBAs. The CBAs specifically address Unit employee work hours in Article VIII by stating that "the weekly regular work days *will be* of 40 hours" per week. This language plainly states that Unit employees' regular work week will consist of 40 hours. I find no merit to Respondent's argument that the term "will be" in this provision should be interpreted as permissive even when considering other language found in the CBAs such as "shall" or "will provide."

While Respondent relies on the language granting it the right to establish and change work shifts and to assign personnel to the shifts. I note that subsections E and F of Article VIII allow Respondent to modify shifts for many of the Unit employees, but also specifically forbid such changes for other employees. The language discussing shifts in Article VIII, subsections E and F clearly refers to the start and stop times of shifts and not the number hours of work each week. Because the CBAs address shifts and number of work hours in separate provisions, I do not find that language referring to shifts is also meant to address numbers of work hours employees are assigned to work each week.

Respondent argues that evidence establishes that it had a past practice of it retaining and utilizing its right to adjust weekly work hours. Respondent relies upon testimony given by Echevarria that Respondent employs Unit employees, who by prior agreement are regularly scheduled on a part-time basis. I find no merit to this argument, because Echevarria's testimony specifically noted that such schedules, if they exist, were by prior arrangement. No party points to evidence in the record of any employee who is regularly scheduled to work less than 40 hours per week, although portions of the CBA appear to consider that possibility by granting some benefits for employees who ultimately work less than 40 hours per week. Even if some employees regularly work part time by prior arrangement, it does not establish that Respondent retained the right to unilaterally reduce the number of work hours for those employees who were regularly scheduled and worked 40-hour work weeks.

Second, Respondent relies upon the infrequent early release of one full-time employee due to lower work demands as evidence that its interpretation of the CBA is consistent with its past actions. I find that occasionally releasing hourly employees early from their scheduled shift is significantly different than Respondent dramatically reducing, or in some cases suspending, their regularly scheduled work hours. The plain meaning of hourly employee is that the employee is paid only for the hours worked or hours of benefit leave used. Therefore, I find that such infrequent early releases do not equate to pre-scheduling employees for a reduced number of work hours, and they do not evidence a past practice of reducing employee hours.

Having found no merit to Respondent's contract coverage defense, I must also apply the traditional clear and unmistakable waiver analysis to determine whether some combination of contractual language, bargaining history, and past practice establishes that the union waived its right to bargain regarding a challenged unilateral change. See, *MV Transportation*, supra slip op. at 12. The record contains no evidence of bargaining history and, as discussed above, contains no evidence of a past practice of across-the-board reduction of work hours for Unit employees. The two employee witnesses testified that the shifts and the days of the week that they were assigned to work often changed, but regardless of the shifts they were assigned, they were scheduled for 40 hours each week. While the administration rights articles in the CBAs state that

Respondent can establish the work shifts,[14] I find establishing work shifts distinct from changing the number of hours worked each week. While Respondent may have the right to change the start and end times of shifts for some Unit employees and the right to assign employees to different shifts, such changes to work shifts can and historically have been made without changing the number of hours employees are scheduled to work each week.

Due to the lack of other evidence, the CBAs must contain a clear and unmistakable waiver of the Union's right to bargain concerning a reduction in work hours. As discussed above, the language of the CBAs does not support Respondent's contention that the Union waived its right to bargain concerning the reduction in weekly work hours or that the Union waived the right to bargain about such changes. To the contrary, the CBAs reflect that the parties negotiated the issue and agreed upon provisions requiring Unit employees to be scheduled for 40 hours per week. No language states that Respondent can unilaterally alter the agreed upon 40-hour work week.

5. Exigent circumstances

Respondent further contends that even if it was not privileged to act unilaterally under the contract coverage or waiver standards, the Covid-19 pandemic resulted in exigent circumstances that excused it from giving notice and opportunity to bargain before reducing employee work hours. The Board recognizes an exception to the duty to give prior notice and opportunity to bargain where the employer can establish a "compelling business justification," for the action taken. *Winn-Dixie Stores, Inc.*, 243 NLRB 972, 974 fn. 9 (1979), or where "economic exigencies compelled prompt action." *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). The Board recognizes as "compelling economic considerations" only those "extraordinary events" which are "an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action." *Angelica Healthcare Services,* 284 NLRB at 852–853; *Hankins Lumber Co.,* 316 NLRB 837, 838 (1995), and the employer carries a heavy burden of demonstrating that this particular action had to be implemented promptly, that the exigency was caused by external events beyond its control, or that it was not reasonably foreseen. *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 82 (1995); *Triple A Fire Protection, Inc.*, 315 NLRB 409, 414 (1994), enfd. 136 F.3d 727 (11th Cir. 1998); *Our Lady of Lourdes Health Center*, 306 NLRB 337, 340 fn. 6 (1992).

I find that Respondent has not met its burden of demonstrating exigent circumstances that excused it from giving the Union prior notice and opportunity to bargain before reducing employees' work hours. The lockdown order issued on March 12 which curtailed elective surgeries by hospitals in Puerto Rico was caused by external events beyond Respondent's control, and the record contains no evidence that antiunion animus was the motive for the reduction in work hours. Respondent conducted a management meeting sometime prior to April 14 at which it decided to unilaterally reduce employee work hours based upon the then current and projected low patient census and other concerns caused by the pandemic, and it issued its initial letter to employees communicating that decision. Therefore, a month passed from the issuance of the March 12 order and the announced unilateral change. The changes that Respondent made to the published work schedules did not start for 4 or more days after the

[14] This right to establish work shifts is further limited by other language in at least some of the CBAs.

announced change, further evidencing that immediate action was not necessary. Under the circumstances it was reasonable for Respondent to expect a decrease in revenue and the need to curtail economic losses as soon as the March 12 order issued. Even if it took Respondent some time to fully appreciate the economic impact of the pandemic delaying its initial actions by a week or 2, I see no viable argument that it had no choice but to take immediate action and forego notifying the Union and giving it an opportunity to bargain. Furthermore, the reduction/suspension of work hours for Unit employees continued for months. There is no viable defense that time restraints prevented Respondent from negotiating with the Union about alternative measures to the reduction/suspension of work hours for subsequent work weeks.

6. Effects bargaining

General Counsel and Charging Party also allege that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain over the effects of reducing employee work hours. In addition to its duty to bargain over the decision to reduce employee work hours, the duty to bargain includes the obligation to bargain over the effects of that decision. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981). Respondent contends, as discussed above, that the administration rights article of the CBAs privileged it to make the unilateral change without bargaining concerning the decision or effects.

As discussed above, I find that Respondent unlawfully failed to provide the Union notice and the opportunity to bargain over the decision of how to reduce employee work hours or otherwise address the lack of work and other considerations caused by the pandemic. "Where, as here, a union is entitled to bargain over both the decision and its effects, the employer must provide the union a prior or contemporaneous opportunity to bargain over the former to fully satisfy its obligation to bargain over the latter." *International Game Technology*, 366 NLRB No. 170, slip op. at 1 fn. 3 & 10 (2018). See *Solutia, Inc.*, 357 NLRB 58, 65 (2011) ("Respondent's limited offer to bargain only over the latter [the effects] without the former [the decision] was insufficient to satisfy its obligations as to either") and cases cited therein; enfd. 699 F.3d 50 (1st Cir. 2012); *Dan Dee West Virginia Corp.*, 180 NLRB 534, 539 (1970) ("It may be true that the Union avoided bargaining about the effects of the change but bargaining on that subject was premature until the matter of the change was resolved or an impasse reached on it.") Given Respondent's unlawful failure to bargain over the reduction in work hours decision, the Respondent failed to satisfy its duty to bargain over the effects of that.

7. Conclusion

In sum, for these reasons, I find that Respondent violated Section 8(a)(5) and, derivatively, 8(a)(1) of the Act by failing and refusing, since on or about April 14, 2020, to bargain over the decision to reduce unit employees' weekly assigned work hours. *Bemis Co.*, 370 NLRB No.7, slip op. at 1 fn. 3 (2020) (finding Sec. 8(a)(5) derivative violation of Section 8(a)(1)). Furthermore, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and opportunity to bargain over the decision and the effects of reducing/suspending the Unit employees' work hours.

C. Information Request Allegations

1. The facts

On April 15, Echevarria emailed a letter to Rodriguez objecting to and requesting information about the announced reduction in employee hours, including information about other cost saving measures referred to in the employee letter, the reduction in patient census and difficulties in securing necessary protective gear justified the implementation. (GC Exh. 6a-b.) Echevarria testified that he requested the information to negotiate over the decision and the impact of the reduction in hours and/or temporary suspension of work hours for Unit employees. (Tr. 177–178.) Respondent provided some but not all of the requested information. The complaint alleges the requested information is relevant and necessary to the Union for its role as collective-bargaining representative and that Respondent failed to provide the following information or failed to provide it on an ongoing basis.

(i) Copies of timecard reports since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
(ii) Payroll since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
(iii) A list of all previously implemented cost savings measures, including the date of implementation, affected employees, department, job classification and seniority.
(iv) Copies of the work programs from the date since the first cost savings measure was in effect for all departments where affected personnel work.
(v) Copies of the timecard reports from the date since the first cost savings measure was in effect for all affected employees.
(vi) Copies of the payroll since the date the first cost savings measure was in effect for all departments where affected personnel work.

On April 16, Echevarria emailed Rodriguez renewing and amending his April 15 request for information. Echevarria's email stated that "[t]hese requests for information, as well as yesterday's, are made so that after analyzing them, we can see what alternative, if any, can be suggested so that this reduction in work schedule, which was not notified or negotiated with the Union, can be rescinded." The complaint alleges that Respondent failed to provide the following information from that request:

(i) Per-diems work programs from March 1, 2020 to the date of the request, including timecard reports for all departments where the hours of work will be reduced.
(ii) Contracts, contract extensions, and work programs for new hires and employees presently under contract, from January 2020 to the date of the request (April 16, 2020).

Finally, on April 21, another Union officer, Ingrid Vega, sent an email to Rodriguez requesting that Respondent furnish the Union with information concerning the closure of the Endoscopy department. The complaint alleges that Respondent failed to provide the names,

classifications, hourly wage rates, and seniority of employees affected by the closure of the Endoscopy department. (Tr. 118, 119, 128.)

On April 29, Rodriguez responded to the Union's information requests through a series of emails that included providing copies of the letters distributed to the employees and various other requested documents. Rodriguez noted that Respondent was "working on answering" the other requests. (Tr. 132–135; GC Exh. 9a-b.) Rodriguez also forwarded copies of the work schedules[15] of the affected employees. (Tr. 136; GC Exh. 10a-b.)

On May 6, Rodriguez emailed the Union representatives referring to the reductions in work hours as temporary suspensions without pay and claimed that the reduction in work hours were permitted under the administration rights article of the CBAs. In response to the information requests at issue here, Rodriguez's email states:

> 1. The time-card report from April 15, 2020, onward for the employees affected by the reduction of hours. Respondent replied: "Objection to this request because it is irrelevant to the functions that the Union must perform."
>
> 2. The payrolls from April 15, 2020 onwards, of all department where personnel to be impacted. Respondent replied: "Objections to this request because it is irrelevant to the functions that the Union must perform since the suspension without paid of union employees respond to the shortage of work for them."
>
> 3. List of implemented measures, including implementation date, list of affected workers, department that they work in, occupational classification and seniority date. Respondent replied "Objections to this request because it does not relate to union employees nor is it relevant to the functions that the Union must perform. Furthermore, the requested list does not coincide with the subject matters required to be included in the list."
>
> 4. The work schedules from the date on which the first measure was implemented to the present time, of all departments where personnel that were impacted by each of them work. Respondent replied: "Objection to this request because it does not relate to union employees nor is it relevant to the functions that the Union must perform."
>
> 5. Copy of the time-card report from the date on which the first measure was implemented onwards, of all workers to be impacted by this measure. Respondent replied, "Objection to this request because it does not relate to union employee or is it relevant to the functions that the Union must perform."
>
> 6. Copy of the payroll from the date on which the first measure was implemented onwards, of all departments where personnel to be impacted by this measure work, Respondent replied "Objection to this request because it does not relate to union employees nor is it relevant to the functions that the Union must perform

[15] Witnesses and documentary evidence use the terms "work program" and "work schedule" to refer to published dates and times that employees were assigned to work. (Tr. 140–141, 151: GC Exh. 10a-b.) For consistency, I use only the term "work schedule" to express this concept.

since the suspensions without pay of union employees respond to the shortage of work for them."

7. Copy of the work schedules of per-diem personnel from March 1, 2020, to the present time, of all departments where you will implement the reduction in work schedules as well as the time-card reports using also as a reference the date from March 1, 2020, to the present time. Respondent replied: "Objection to this request because it does not relate to union employees nor is it relevant to the functions that the Union must perform."

8. Copy of the original employment contract and all its extensions of all newly hired personnel including contract-employees from January 2020, to the present time, as well as the work schedule where they appear. Respondent replied: "Objection to this request because it does not relate to union employees nor is it relevant to the functions that the Union must perform."

At hearing, Respondent attempted to establish that all the relevant requested information at issue was contained within the information it provided. For example, Respondent's Counsel questioned Echevarria about whether the information contained in GC Exhibit 13(a-b) could have been used to determine which employees in the endoscopy department were suspended. I credit Echevarria's testimony that he had not thought to deduce an answer for the requested information from that document. Furthermore, I find credence in Echevarria's contention that nothing in the document verified which employees from the endoscopy department had been affected. (Tr. 188–189.) While Echevarria had heard from employees that it was the entire department, nothing from Respondent verified that. (Tr. 189.) Based on the whole record, I find no evidence supporting Respondent's assertion that the requested information, as listed in the complaint, had been provided.

2. Legal standards

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." 29 U.S.C. § 158(a)(5). An employer has a general duty to provide information needed by the bargaining representative in contract negotiations and administration. See *A–1 Door & Building Solutions*, 356 NLRB 499, 500 (2011); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). Typically, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). Information concerning non-unit employees is not presumptively relevant, requiring the union to provide an explanation as to how the information is relevant to its bargaining duty. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

Where a showing of relevance is required because the request concerns non-unit matters, the burden is "not exceptionally heavy." *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983); *Shoppers Food Warehouse*, 315 NLRB at 259. "The Board uses a broad, discovery-type of standard in determining relevance in information requests." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006). The issue is whether the Union's

request for information is of "probable" or "potential" relevance. *Transport of New Jersey,* 233 NLRB 694, 694 (1977) (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967)); *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105 (1991) ("the information need not be dispositive of the issue between the parties but must merely have some bearing on it. In general, the Board and the courts have held that information that aids the arbitral process is relevant and should be provided"). *W–L Moulding Co.*, 272 NLRB 1239, 1240 (1984), quoting *NLRB v. Rockwell–Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969) and *Acme Industrial*, supra at 437. It is not the Board's role to pass on the merits of the Union's claim, "[t]he Board's only function in such situation is in 'acting upon the possibility that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'" *W–L Moulding Co.*, 272 NLRB at 1240, quoting *NLRB v. Rockwell–Standard Corp.*, supra at 957 and *Acme Industrial*, supra at 437. See also *Howard University*, 290 NLRB 1006, 1007 (1988). The Supreme Court endorsed the Board's view that a "liberal" broad "discovery type" standard must apply to union information requests related to the evaluation of grievances in holding that the burden of showing relevance is light and requires only "the 'probability that the desired information [is] relevant. *NLRB v. Acme Industrial Co.*, supra, at 437.

At the same time, for information that is not presumptively relevant, the union must demonstrate that it had "a reasonable belief supported by objective evidence for requesting the information." *Shoppers Food Warehouse*, 315 NLRB at 259. "The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." *Disneyland Park*, 350 NLRB at 1258 fn. 5. The Board has held that a "hypothetical theory" is insufficient (*Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1985)), and "[s]uspicion alone is not enough." *G4S Secure Solutions (USA), Inc.*, 369 NLRB No. 7, slip op. at 2 (2020). In these nonunit information request situations, "a special showing of pertinence" is required. *Brown Newspaper Publishing Co., Inc.*, 238 NLRB 1334, 1337 (1978). Actual relevance is not required, but the union must demonstrate a probability that the data is useful for the purpose of bargaining intelligently. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Brown Newspaper*, supra. A union can reasonably rely on the observations of bargaining unit employees in suspecting violations of their collective-bargaining agreement and thus asking for information from the employer. *Walter N. Yoder & Sons, Inc.*, 270 NLRB 652, 655 fn. 6, enfd. in relevant part 754 F.2d 531, 534 (4th Cir. 1985). Specific violations of the CBAs are not required, nor must information that triggered the information request be "accurate, nonhearsay, or even ultimately reliable." *W-L Molding Co*., 272 NLRB 1239, 1240 (1984); *Public Service Electric & Gas Co*., 323 NLRB 1182, 1186, 1188 (1997).

To make this showing, "the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." *Murray American Energy, Inc.*, 370 NLRB No. 55 (2020) (*Murray II*), quoting *Murray American Energy, Inc.*, 366 NLRB No. 80 (2018) (*Murray I*), enfd. mem. 765 Fed.Appx. 443 (D.C. Cir. 2019. In *Murray I* and *Murray II*, the Board found that the relevance of "requested copies of invoices, bids, or other documents concerning the nature, extent, cost, and duration of work being performed by contractors" "should have been apparent to the [employer] in light of the

parties' ongoing disputes over contracting." Id. Similarly, in *United States Postal Service*, 364 NLRB No. 27 (2016), the Board held that requested information about the outsourcing of unit work was necessary and relevant for the bargaining representative to consider whether the parties' collective-bargaining provision concerning outsourcing had been violated.

Once the burden of showing the relevance of non-unit information is satisfied, the duty to provide the information is established. Information that is not presumptively relevant may have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969). The refusal of an employer to provide information that is request by a union and relevant to its bargaining duties is a per se violation of [Section 8(a)(5) of] the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.,* 220 NLRB 189, 191 (1975)*; Procter & Gamble Mfg. Co.* 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

The Board has also found that "[a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Monmouth Care Center*, 354 NLRB 11, 41 (2009) (citations omitted), reaffirmed and incorporated by reference, 356 NLRB 152 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012). "[I]t is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable, good faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "In evaluating the promptness of the employer's response, 'the Board will consider the complexity and extent of information sought, its availability, and the difficulty in retrieving the information.'" *West Penn Power Co.*, 339 NLRB 585, 587 (2003) (quoting *Samaritan Medical Center*, 319 NLRB 392, 398 (1995)), enfd. in relevant part 394 F.2d 233 (4th Cir. 2005).

3. The parties' positions on the information request allegation

Respondent contends, as discussed above, that it was privileged to reduce the employees' hours or suspend their working hours without bargaining with the Union, and therefore, the information requested by the Union was not relevant to any bargaining duty of the Union. As discussed above, I find that Respondent had a duty to bargain with the Union concerning the decision to reduce and/or suspend Unit employee work hours and the effects of such decision. Therefore, Respondent had a duty to provide information relevant to bargaining the decision and its effects. General Counsel and the Union contend that much of the information requested is presumptively relevant Unit employee information and to the extent that it is not presumptively relevant it is relevant to bargaining concerning the reduction/suspension of Unit employee work hours.

4. Relevancy of the information requests

While many of the Union's requests for information can be read to include information for employees beyond those covered by the CBAs, to the extent the requests referred to existing and new hire unit employees' timecards, payroll, work programs, and schedules, such information is presumptively relevant. Respondent is required to provide presumptively relevant information without further showing of relevancy by the Union.

To the extent that the requests sought nonunit employee information, the Union must show that the requested information is relevant and necessary for it to fulfill its bargaining duty or such relevance must be apparent from the circumstances. While the request for payroll, timecards, schedules, and work programs for affected employees and/or departments includes information about Unit employees, as discussed above, it arguably includes information about non-unit employees who were affected or work in affected departments. The request for contracts, payroll, timecards, schedules, and work programs for contracted and per diem employees clearly seek information about nonunit employees. Similarly, the requests for information about "all previously implemented cost savings measures" is broad enough to include information not directly related to Unit employees.

The Union's first information requests states that it sought the information in response to the announced reduction in employee hours, including information about other cost saving measures referred to in the letters sent to Unit employees, the reduction in patient census and difficulties in securing necessary protective gear justified the implementation. The Union's follow-up requests for information reiterated that it was seeking the information to confirm the necessity for and possible alternatives to the reduction and/or suspension of Unit employee work hours. The information sought by the Union all relates to changes in labor and other costs related to the economic changes brought on by the pandemic and Respondent's stated actions in response to those changes. Therefore, I find that the relevancy and need for the requested information is apparent from the circumstances and the statements made by the Union in the requests. See, *Kraft Foods North America, Inc.*, 355 NLRB 753, 755 (2010); *Allison Corp.*, 330 NLRB 1363, 1367–1368 (2000) (employer made requested information on subcontracting and import of materials relevant by attributing layoffs to those factors); *Langston Cos.*, 304 NLRB 1022, 1070–1071 (1991) (employer made information on corporate wide substance abuse program relevant by referring to it in bargaining); *E. I. DuPont & Co.*, 276 NLRB 335 (1985) (employer made cost and productivity information from its other facilities relevant by claiming the bargaining unit needed to be restructured).

5. Conclusion

Accordingly, I find that Respondent failed and refused to provide the information requested by the Union as listed above in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Hospital La Concepcion (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Union) is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times since at least May 24, 2018, the Union has been the exclusive collective-bargaining representative of the following units of employees at its San Germán, Puerto Rico, which units are appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
   a. All medical technologists employed by Hospital La Concepcion located in San Germán, Puerto Rico, in its clinical laboratory, *excluding* all other professional employees, clerks, laboratory technicians, nurses and supervisors as defined by law.

b. All laboratory technicians, laboratory assistants, operating room technicians, physical therapy technicians, respiratory therapy technicians, respiratory therapists, radiologic technologists, escorts, pharmacy assistants, pharmacy technicians, licensed practical nurses, nursing assistants, employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, professional, clerical employees, guards and other supervisors as defined by law.

c. All registered nurses employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, clerical employees, guards, head nurses and other supervisors as defined by law.

d. All dietary technicians, cafeteria, storeroom, janitors and/or environmental services technicians, maintenance and/or physical facilities, maintenance technicians, parking employees and drivers employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* messengers, all other employees, professionals, registered nurses, technical employees covered by another collective-bargaining agreement, guards and supervisors as defined by law.

4. Since about April 14, 2020, Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union as the collective-bargaining representative of the units' employees.
5. Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms and conditions of employment for the units' employees by reducing their weekly work hours.
6. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with:
   a. Copies of timecard reports since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
   b. Payroll since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
   c. A list of all previously implemented cost savings measures, including the date of implementation, affected employees, department, job classification and seniority.
   d. Copies of the work programs from the date since the first cost savings measure was in effect for all departments where affected personnel work.
   e. Copies of the timecard reports from the date since the first cost savings measure was in effect for all affected employees.
   f. Copies of the payroll since the date the first cost savings measure was in effect for all departments where affected personnel work.
   g. Copies of the per-diems work programs from March 1, 2020 to the date of the request, including timecard reports for all departments where the hours of work will be reduced.
   h. Contracts, contract extensions, and work programs for new hires and employees presently under contract, from January 2020 to the date of the request (April 16, 2020).
   i. The names, classifications, hourly wage rates, and seniority of employees affected by the closure of the Endoscopy department.
7. The aforementioned unfair labor practices by the Respondent affected commerce within the meaning of Section 2(6) and (7) of the Act.
8. Respondent has not violated the Act except as set forth above.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing terms and conditions of employment of unit employees, Respondent shall notify and, on request, bargain with the Union before implementing any further changes in wages, hours, or other terms and conditions of employment of unit employees. Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally suspending work hours/laying off some unit employees starting about April 19, 2020, Respondent shall restore the status quo ante. Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally reducing work hours of some unit employees starting about April 19, 2020, Respondent shall restore the status quo ante. Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with requested relevant information, Respondent shall furnish to the Union the information it requested as listed above.

The Respondent shall make whole its employees for any loss of earnings and other benefits suffered as a result of the unlawful suspension of work hours/layoffs. Backpay owed as a result of the layoffs shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). In accordance with *King Soopers, Inc*., 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate laid-off employees for their reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Backpay owed as a result of other unlawful changes, which did not result in any cessation of employment, shall be computed as prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Additionally, Respondent shall compensate affected unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each affected employee in accordance with *AdvoServ of New Jersey, Inc*., 363 NLRB No. 143 (2016). In addition to the backpay-allocation report, I find that Respondent must be ordered to file with the Regional Director for Region 12 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

Moreover, Respondent shall bargain with the Union as the exclusive collective-bargaining representative of the units' employees before implementing any changes in their wages, hours, or other terms and conditions of employment. Furthermore, Respondent must furnish to the Union in a timely manner the information requested, as set forth above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Hospital La Concepcion, San Germán, Puerto, Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) failing and refusing to bargain collectively with Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Union) as the exclusive collective-bargaining representative of the employees in the following bargaining units (Units):

i. All medical technologists employed by Hospital La Concepcion located in San Germán, Puerto Rico, in its clinical laboratory, *excluding* all other professional employees, clerks, laboratory technicians, nurses and supervisors as defined by law.

ii. All laboratory technicians, laboratory assistants, operating room technicians, physical therapy technicians, respiratory therapy technicians, respiratory therapists, radiologic technologists, escorts, pharmacy assistants, pharmacy technicians, licensed practical nurses, nursing assistants, employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, professional, clerical employees, guards and other supervisors as defined by law.

iii. All registered nurses employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, clerical employees, guards, head nurses and other supervisors as defined by law.

iv. All dietary technicians, cafeteria, storeroom, janitors and/or environmental services technicians, maintenance and/or physical facilities, maintenance technicians, parking employees and drivers employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* messengers, all other employees, professionals, registered nurses, technical employees covered by another collective-bargaining agreement, guards and supervisors as defined by law.

(b) Failing and refusing to provide the Union with notice and an opportunity to bargain over proposed changes to working conditions and the effects of such changes before implementing such changes.

(c) Failing and refusing to furnish, or unreasonably delaying in furnishing, the Union with requested information that is relevant and necessary to the Union's role as collective-bargaining representative.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[16] If no exceptions are filed as provided by Sec. 102.48 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Before implementing any changes in wages, hours, and terms and conditions of employment of employees in the Units, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the Units.

(b) Rescind the changes in the terms and conditions of employment for its employees in the Units that were unilaterally implemented about April 19, 2020.

(c) Make employees in the Units whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful unilateral changes implemented about April 19, 2020, in the manner set forth in the remedy section of this decision.

(d) Compensate employees in the Units for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) File with the Regional Director for Region 12 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award,

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Furnish to the Union in a timely manner:

- Copies of timecard reports since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
- Payroll since April 15, 2020, for departments where personnel, who were affected by the reduction of work hours, are employed.
- A list of all previously implemented cost savings measures, including the date of implementation, affected employees, department, job classification and seniority.
- Copies of the work programs from the date since the first cost savings measure was in effect for all departments where affected personnel work.
- Copies of the timecard reports from the date since the first cost savings measure was in effect for all affected employees.
- Copies of the payroll since the date the first cost savings measure was in effect for all departments where affected personnel work.
- Copies of the per-diems work programs from March 1, 2020 to the date of the request, including timecard reports for all departments where the hours of work will be reduced.
- Contracts, contract extensions, and work programs for new hires and employees presently under contract, from January 2020 to the date of the request (April 16, 2020).
- The names, classifications, hourly wage rates, and seniority of employees affected by the closure of the Endoscopy department.

(h) Post at the San Germán, Puerto Rico facility copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 12,

[17] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 19, 2020.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(j) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 22, 2021

Kimberly Sorg-Graves

Kimberly Sorg-Graves
Administrative Law Judge

electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Union) is the representative in dealing with us regarding wages, hours, and other working conditions of the employees in the following units:

- All medical technologists employed by Hospital La Concepcion located in San Germán, Puerto Rico, in its clinical laboratory, *excluding* all other professional employees, clerks, laboratory technicians, nurses and supervisors as defined by law.
- All laboratory technicians, laboratory assistants, operating room technicians, physical therapy technicians, respiratory therapy technicians, respiratory therapists, radiologic technologists, escorts, pharmacy assistants, pharmacy technicians, licensed practical nurses, nursing assistants, employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, professional, clerical employees, guards and other supervisors as defined by law.
- All registered nurses employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* all other employees, clerical employees, guards, head nurses and other supervisors as defined by law.
- All dietary technicians, cafeteria, storeroom, janitors and/or environmental services technicians, maintenance and/or physical facilities, maintenance technicians, parking employees and drivers employed by Hospital La Concepcion located in San Germán, Puerto Rico, *excluding* messengers, all other employees, professionals, registered nurses, technical employees covered by another collective-bargaining agreement, guards and supervisors as defined by law.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the units.

WE WILL NOT unilaterally change your terms and conditions of employment by implementing changes to the work hours of our employees in the units.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, before implementing any changes in wages, hours, and terms and conditions of employment of employees in the units, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the Units.

WE WILL rescind the changes in the terms and conditions of employment for our employees in the units regarding their weekly work hours.

WE WILL, within 14 days from the date of this Order, offer employees affected by our unilateral changes, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole employees in the units who were affected by our unilateral changes, for any loss of earnings and other benefits resulting from their unlawful reduction/suspension of weekly work hours.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL provide the Union with:

- Copies of timecard reports since April 15, 2020, for departments where personnel who were affected by the reduction of work hours are employed.
- Payroll since April 15, 2020, for departments where personnel, who were affected by the reduction of work hours, are employed.
- A list of all previously implemented cost savings measures, including the date of implementation, affected employees, department, job classification and seniority.
- Copies of the work programs from the date since the first cost savings measure was in effect for all departments where affected personnel work.
- Copies of the timecard reports from the date since the first cost savings measure was in effect for all affected employees.
- Copies of the payroll since the date the first cost savings measure was in effect for all departments where affected personnel work.
- Copies of the per-diems work programs from March 1, 2020 to the date of the request, including timecard reports for all departments where the hours of work will be reduced.
- Contracts, contract extensions, and work programs for new hires and employees presently under contract, from January 2020 to the date of the request (April 16, 2020).
- The names, classifications, hourly wage rates, and seniority of employees affected by the closure of the Endoscopy department.

Hospital La Concepcion
(Employer)

Dated:_____ By:_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

South Trust Plaza, 201 East Kennedy Boulevard, Suite 300, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-260107 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.